

REMARKS

Claims 20-55 were under examination in the outstanding Office Action. Claim 42 is canceled herein without prejudice or disclaimer. Claims 20-41 and 43-55 are amended herein for clarity to more particularly define the invention, to correct informalities and to better conform to U.S. practice. No new matter is added by these amendments and their entry is respectfully requested.

The Office Action states that the claims are restricted as follows

Group I (claims 20-38), drawn to methods of using probes.

Group II (claims 39-55), drawn to probes and kits comprising probes.

The Examiner alleges that the inventions, listed as groups I and II, do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features. Specifically, the Examiner states that the linking technical feature of molecular beacon probes containing 2'-O-methyl nucleotides does not constitute a contribution over the prior art and cites to Tsourkas et al. (Nucleic Acids Res. 2002) for support for this conclusion. On this basis, the Examiner concludes that there is no special technical feature linking the recited groups.

Applicant provisionally elects Group II (claims 39-55) with traverse. The traversal is on the basis that the Examiner has not demonstrated that the claims do not relate to a single general inventive concept under PCT Rule 13.1.

Applicant respectfully disagrees with the conclusion in the Office Action that the special technical feature linking groups I and II of the present invention are molecular beacon probes containing 2'-O-methyl nucleotides. Applicant respectfully submits that the special technical feature linking groups I and II are probes containing one or more nucleotides or nucleotide analogues having an affinity increasing modification and one or more unmodified nucleotides.

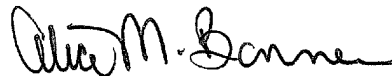
Tsourkas et al. describes molecular beacons consisting of continuous stretches of 2'-O-methyl substituted nucleotides with no unmodified nucleotides in the stem or the loop of the molecular beacons. Thus, Tsourkas et al. does not teach or suggest the probes of the present invention and therefore, groups I and II of the present invention form a single general inventive concept that indeed defines a contribution over the prior art and should be searched and examined together.

Finally, if the outstanding restriction is maintained, once allowable subject matter is identified among the product claims of Group II, applicant requests that the Examiner review the claims of Group I reciting method claims according to the practice of rejoinder as discussed in the Office Action, page 3, and as set forth in section 821.04 of the Manual of Patent Examining Procedure (MPEP). In particular, it is stated in the MPEP that if a product claim is elected in a restriction and then found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim are to be rejoined in the same application.

The Examiner is encouraged to contact the undersigned directly if such contact will expedite the examination and allowance of the pending claims.

No fee is believed due with this response. However, the Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account No. 50-0220.

Respectfully submitted,

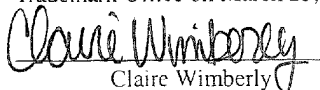


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CERTIFICATION OF ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on March 25, 2008.



Claire Wimberly